

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

MARLENE R. MORENO,

Defendant and Appellant.

B214607

(Los Angeles County  
Super. Ct. No. LA060050)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard Kirschner, Judge. Affirmed.

Russell S. Babcock, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Mary Sanchez and Tasha G. Timbadia, for Plaintiff and Respondent.

---

Marlene Moreno appeals from her conviction of commercial burglary. (Pen Code, § 459.)<sup>1</sup> Her single contention on appeal is that the trial court erred in ordering her to pay \$75,502.65 in direct restitution to the victim. We conclude the trial court acted within its discretion in setting the restitution amount and affirm.

### **FACTS AND PROCEEDINGS**

Although this is an appeal from a no contest plea, we nevertheless recite facts pertaining to the burglary that are germane to the court's restitution order. Defendant Moreno and her codefendant were charged with commercial burglary following a break-in at a vacant commercial building on September 15, 2008. In the early morning hours, a security officer was patrolling the area when he saw several people leaving the building. The officer got out of his vehicle, contacted the individuals, an altercation ensued, and the group fled. The security officer called for police backup. The building was described as having been "ransacked."

Shortly thereafter, defendant and others were arrested hiding in an adjacent underground parking facility. Police found copper wiring, wire cutting tools and telephone line equipment in two vehicles parked between 10 and 15 feet from the building. A toolbox and copper wires were found inside the building, and a fence surrounding the building appeared to have been cut. Defendant later admitted to a police officer that she and her codefendant had decided to steal some copper wire. The money from the expected sale of the copper was to be used to secure the release of a friend's car that the police had earlier impounded.

Defendant was charged with a single count of burglary. Following her no contest plea, she was placed on formal probation, terms of which included 365 days in the county jail, various statutory fines and fees, and, following a hearing, restitution to the building's owner of \$75,502.65. Her timely appeal followed.

---

<sup>1</sup> All further statutory code references are to the Penal Code.

## **DISCUSSION**

Defendant contends that the trial court erred in ordering direct restitution of \$75,502.65 because there was insufficient evidence that she was responsible for damage to the building in that amount. We start our analysis with a summary of the restitution proceedings.

About six weeks after defendant's plea, the trial court held a formal restitution hearing. The only person who testified was the project manager for the company that owned the building. He described the premises as having been vacant for about three years. It previously had been used as a plating factory and before that for making circuitry for the military. Following the break-in, the owner had obtained from an electrical contractor an estimate of the cost to repair the building. Although the written estimate is not part of the record on appeal, the project manager reviewed the estimate at the hearing and was cross-examined on it. The witness testified that machines inside the building had been damaged and wiring had been ripped out. He described various components that had to be repaired or replaced. He estimated that the inspection on which the estimate was based took place approximately two weeks after the break-in. Although the evidence was somewhat unclear, the witness testified that the building was last inspected approximately 30 days before the burglary and that there had been no break-ins since September 15th.

At the hearing, defense counsel essentially conceded that his client was responsible for some of the damage. He claimed, as he does on appeal, that there was insufficient evidence that his client or any of the people responsible for the burglary caused the totality of the damage described by the estimate. (He does not contest the actual cost to repair the items described in the estimate, only that his client was not responsible for all of the loss.) Defendant argued that the building admittedly had been vacant for a number of years and there was no evidence as to what had happened in the 30 days between the last inspection of the building and the September 15th burglary. The trial court rejected the argument on the grounds that defense counsel was asking the court

to speculate that there had been some other break-in at some other time and those responsible for that hypothetical burglary had caused some or most of damage to the property. The trial court rejected the argument, finding that defendant and her cohorts were responsible for the damage when they ripped out the copper wiring that they intended to sell.<sup>2</sup>

We review a trial court's restitution order for abuse of discretion. (*People v. Draut* (1999) 73 Cal.App.4th 577, 581.) We consider this discretion in light of the avowed policy of this state that persons who suffer losses as a result of the criminal activity of others are entitled to full restitution for the damage they have suffered. (Cal. Const., art. I, § 28, subd. (b); *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 242; § 1202.4.) "Where there is a factual and rational basis for the amount of restitution ordered by the trial court," there is no abuse of discretion. (*People v. Millard* (2009) 175 Cal.App.4th 7, 26.) "[T]he court's discretion in setting the amount of restitution is broad, and it may use any rational method of fixing the amount of restitution as long as it is reasonably calculated to make the victim whole." (*People v. Baker* (2005) 126 Cal.App.4th 463, 470.) The standard of proof at a restitution hearing is by a preponderance of the evidence and the appellate court does "not reweigh or interpret the evidence; rather, it determines whether there is sufficient evidence to support the inference drawn by the trier of fact." (*Id.* at p. 469.)

If not expressly, the trial court impliedly found there was no "second" break-in and found that defendant and others involved in the burglary were responsible for all of the damage described in the estimate. It necessarily found that the estimate was prepared in a reliable manner and the cost was reasonable. To the extent the findings were not expressed in so many words during the colloquy between counsel and the court at the

---

<sup>2</sup> We note that at the preliminary hearing before a different judge, the security officer testified that when he had been in the building prior to the burglary it was not in the "ransacked" condition he saw it in immediately after the burglary on September 15. The record does not reflect whether the trial court considered this testimony in ordering restitution.

hearing, we imply those findings to support the court's ruling. (See *People v. Self* (1991) 233 Cal.App.3d 414, 417-418 [findings in probation revocation proceedings need not be express].) These findings were supported by substantial evidence that defendant and others had been in the building just moments before their apprehension and, by defendant's own admission, had stolen copper wire which had been ripped out of the building walls. The findings on the amount of damage to the building were based on the live testimony of the project manager and the written estimate.

Defendant's reliance on *People v. Carbajal* (1995) 10 Cal.4th 1114, *People v. Scroggins* (1987) 191 Cal.App.3d 502, and *People v. Lent* (1975) 15 Cal.3d 481, for a contrary result, is misplaced. The issue in each of those cases was whether the trial court had discretion to order restitution as a condition of probation when the victim's loss was not necessarily caused by the criminal conduct underlying the conviction. For example, in *Lent*, the defendant was convicted of one count of grand theft but acquitted of a second; the issue on appeal was whether the trial court abused its discretion by imposing as a condition of probation restitution of funds involved in the charge of which the defendant was acquitted. In *Scroggins*, the defendant pled guilty to receiving stolen property; the issue on appeal was whether the trial court abused its discretion by imposing as a condition of probation that the defendant pay restitution to the burglary victim for property stolen in the burglary but not found in the defendant's possession. Finally, in *Carbajal*, the defendant was convicted of hit-and-run; the issue on appeal was whether the trial court abused its discretion by imposing as a condition of probation restitution to the owner of the property damaged in the accident from which the defendant unlawfully fled.

Those cases are inapposite because, here, the trial court found that the victim's loss was caused by the criminal conduct underlying the conviction for burglary; i.e., that the building damage was caused by ripping out the stolen copper. Defendant simply challenges the sufficiency of the evidence to support that finding. As we have discussed, substantial evidence supports the trial court's order.

Finally, defendant argues that the excessive nature of the restitution order constitutes an excessive fine under the Eighth Amendment. She claims that since insufficient evidence supports restitution in the amount ordered, it follows the order was excessive. Because, as we have observed, substantial evidence supports the restitution order, her constitutional claim necessarily fails.

### **DISPOSITION**

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.